ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
	1. Log No: CCDF-ACF-PIQ-2011-01	**2. Issuance Date:** 1/5/2011
	3. Originating Office: Office of Child Care	
	4. Key Words: Child Care and Development Fund (CCDF); Parental Choice; Quality Improvement Systems	

POLICY INTERPRETATION QUESTION (PIQ)

To: State, Territorial and Tribal Lead Agencies administering child care programs under the Child Care and Development Block Grant Act of 1990 (the CCDBG Act), as amended, and other interested parties.

Subject: A number of questions have arisen from Child Care Development Fund (CCDF) Lead Agencies concerning the establishment of policies that require child care providers serving children receiving subsidies to meet certain quality requirements, such as a specified rating level of a quality improvement system, and how those policies interact with CCDF parental choice requirements.

References: The CCDBG Act (42 U.S.C. § 9858 et seq.); Section 418 of the Social Security Act (42 U.S.C. § 618); 45 CFR Parts 98 and 99; 63 FR 39936-39998 (July 24, 1998); 57 FR 34352-34431 (Aug. 4, 1992)

Purpose: This policy interpretation clarifies that the parental choice provisions included in CCDF regulations do not preclude a Lead Agency from establishing policies that require child care providers serving subsidized children to meet certain quality requirements, including those specified within a quality improvement system, provided that the Lead Agency does so in a manner consistent with the CCDF parental choice requirements. Lead Agencies have flexibility to establish requirements for child care providers that serve children receiving subsidies, which may be reflected as distinct levels or ratings within a quality improvement system. In establishing such policies, the Lead Agency must continue to allow parents to choose from a range of child care provider categories and types as outlined in regulation.

Background: As of this writing, more than 23 States have established Quality Rating and Improvement Systems (QRIS) as a systemic strategy to assess, improve, and communicate the level of quality in early care and education programs. The Office of Child Care (OCC) has received questions from a number of Lead Agencies about the implementation of these systems and administration of the child care subsidy program, specifically with regard to parental choice provisions in regulation.

A priority for OCC is to ensure that parents receiving subsidies have access to high quality child care arrangements across different types of providers that foster healthy development and learning for children. In order to be meaningful, the parental choice requirement should give parents high quality child care options. Quality improvement systems have been a mechanism by which Lead Agencies have sought to improve the quality of early care and education, and CCDF quality dollars are often used to support these systems. Lead Agencies are seeking to leverage their investments in quality improvement systems to increase the number of children from low-income families in high quality care settings, including those receiving subsidies. OCC provides technical assistance to facilitate and improve implementation of quality improvement systems and has established a Department-level high priority performance goal to expand these systems.[1] Our goal is to work with Lead Agencies to move these efforts toward a system that ensures all child care settings meet standards of high quality.

Guidance:

Parental Choice Regulatory Requirement –
CCDF regulations at 45 CFR § 98.30(e)(1) require that child care assistance provided through vouchers must permit parents to choose from a variety of child care categories, including center-based child care, group home child care, family child care, and in-home child care. Lead Agencies may impose limitations on in-home child care which is defined at 45 CFR § 98.2 as an individual who provides child care services in the child's own home. The regulations at 45 CFR § 98.30(f) go on to state that regulatory requirements under §98.40, health and safety requirements under §98.41, and payment rates under §98.43 established by a Lead Agency may not restrict parental choice by: 1) expressly or effectively excluding any category of care (i.e., center-based, group home, family child care, and in-home care) or type of provider (i.e., non-profit providers, for-profit providers, sectarian providers, and relatives who provide care) within a category of care; 2) have the effect of limiting parental choice from categories of care or types of providers; or 3) exclude a significant number of providers in any category of care or type of provider.

Policy Guidance –
In general, CCDF Lead Agencies have flexibility to determine regulatory requirements for child care providers. Pursuant to 45 CFR § 98.40, Lead Agencies must have in place licensing requirements applicable to child care services within its jurisdiction. 45 CFR §

[1] Analytical Perspectives, Budget of the United States Government, Fiscal Year 2011, U.S. Department of Health and Human Services, Performance and Management

98.40(b)(1) specifically states that a Lead Agency is not prohibited from imposing more stringent standards and licensing or regulatory requirements on child care providers serving children receiving subsidies. Pursuant to 45 CFR § 98.41, Lead Agencies must also establish health and safety requirements applicable to child care providers that serve children receiving subsidies. A Lead Agency may incorporate licensing, health and safety requirements, and other quality standards for child care providers within its jurisdiction (including those that serve children receiving subsidies) into a quality improvement system. In fact, CCDF regulations at 45 CFR § 98.33 require Lead Agencies to collect and disseminate to parents and the general public consumer education information that will promote informed child care choices across a range of providers. To the extent that quality improvement systems assess and rate the quality of child care settings, these systems provide an important mechanism for meeting this requirement.

Parental choice provisions within CCDF regulations are intended to guarantee parents ability to choose from different categories of care (center, group, family, and in-home) and types of providers (non-profit, for-profit, sectarian, and relatives). However, the parental choice provisions do not require Lead Agencies to pay for child care that does not meet jurisdictional standards of high quality that support children's health, safety, and development. For many Lead Agencies that have established quality improvement systems, a rating level of 1 (or its equivalent) is often associated with minimum licensing and regulatory requirements for child care providers. CCDF regulations at 45 CFR § 98.40(b) specifically permit Lead Agencies to establish higher standards, above minimum licensing requirements, for providers serving children receiving subsidies. A Lead Agency may choose to incorporate those standards into a quality improvement system.

In order to establish such a policy, Lead Agencies must be mindful that parents receiving CCDF assistance must continue to be offered the full range of choice of categories and types of providers. Lead Agencies will need to assess the availability of care across categories and types of care within a quality improvement system. This includes assessing the availability of care for specific subgroups (e.g., infants, school-age children, families who need weekend or evening care) and within rural and underserved areas. Should a Lead Agency choose to implement a quality improvement system that does not include the full range of providers, the Lead Agency would need to have reasonable exceptions to the policy to allow parents to choose a provider that is not eligible to participate in the quality improvement system (e.g., relative care). As an example, a Lead Agency may implement a quality improvement system that incorporates only licensed center-based and family child care providers. In cases where a parent selects a center-based or family child care provider, the State may require that the provider meet a specified level or rating within its quality improvement system. However, the policy must also allow parents to choose other categories and types of child care providers that may not be eligible to participate in the quality improvement system. This is particularly important for geographic areas where an adequate supply of child care is lacking or when a parent has scheduling, transportation, or other special circumstances that prevent the use of a preferred provider within the quality improvement system.

Lead Agencies also have the responsibility to ensure that other program elements, such as payment rate policies and administrative practices do not have the effect of limiting parent choice by excluding a significant number of high quality providers. Low payment rates can dissuade high quality providers from serving children receiving subsidies and payment practices that differ from private pay parents (e.g., not allowing for absence days, not reimbursing providers in a timely manner, and strict alignment between parent work hours and authorized hours of care) can prove burdensome, resulting in a lower number of high quality providers accessible to parents with low-income.

In reviewing State plans, OCC will make no determination that a particular policy or requirement violates the parental choice provisions of CCDF regulations unless such policy or requirement on its face significantly restricts or will clearly have the effect of restricting parental choice. However, if a complaint or program review provides evidence suggesting that the actual impact of implementation may be having the effect of limiting parental choice among categories of care or types of providers, or of excluding a significant number of providers in any category of care or of any type, OCC may require the Lead Agency to provide data, broken out by sub-populations and localities, to show that families receiving subsidies have access to a range of categories and types of care. (See 57 FR 34370-34372 (Aug. 4, 1992).)

Please direct inquiries to the Child Care Program Manager in the appropriate ACF Regional Office.

/s/

Shannon Rudisill
Director
Office of Child Care

Attachment: List of ACF Regional Child Care Program Managers

Office of Child Care Regional Program Managers

Region I
Shireen Riley
HHS/ACF
John F. Kennedy Federal Building
20th Floor, Suite 2025
15 New Sudbury Street
Boston, MA 02203
Phone: (617) 565-1152
Fax: (617) 565-1578
E-mail: shireen.riley@acf.hhs.gov

Region II
Nitza Lopez-Munoz
HHS/ACF
26 Federal Plaza
Room 4114
New York, NY 10278
Phone: (212) 264-2890 X182
Fax: (212) 264-4881
E-mail: nitza.lopezmunoz@acf.hhs.gov

Region III
Beverly Wellons
HHS/ACF
150 S. Independence Mall, West
Public Ledger Building, Suite 864
Philadelphia, PA 19106-3499
Telephone: (215) 861-4020
Fax: (215) 861-4070
E-mail: beverly.wellons@acf.hhs.gov

Region IV
Eric Blanchette
HHS/ACF
61 Forsyth Street
Suite 4M60
Atlanta, GA 30303-8909
Phone: (404) 562-2782
Fax: (404) 562-2985
E-mail: eric.blanchette@acf.hhs.gov

Region V
Kathleen Penak
HHS/ACF
233 N. Michigan Ave.
Suite 400
Chicago, IL 60601
Phone: (312) 353-3270
Fax: (312) 353-2629
E-mail: kathleen.penak@acf.hhs.gov

Region VI
Gwendolyn Jones
HHS/ACF
1301 Young Street
Suite 914
Dallas, TX 75202
Phone: (214) 767-3849
Fax: (214) 767-8890
E-mail: gwendolyn.jones@acf.hhs.gov

Region VII
Betty Lammle
HHS/ACF
Federal Office Building
Room 276
601 East 12th Street
Kansas City, MO 64106
Phone: (816) 426-2264
Fax: (816) 426-2888
E-mail: betty.lammle@acf.hhs.gov

Region VIII
Karen Knoll-Moran
HHS/ACF
Federal Office Building
1961 Stout Street
9th Floor
Denver, CO 80294-3538
Phone: (303) 844-1164
Fax: (303) 844-3642
E-mail: karen.knollmoran@acf.hhs.gov

Region IX
Robert Garcia
HHS/ACF
90 7th Street, Ninth Floor
San Francisco, CA 94103-6710
Phone: (415) 437-8439
Fax: (415) 437-8444
E-mail: robert.garcia@acf.hhs.gov

Region X
Paul Noski
HHS/ACF Blanchard Plaza
2201 Sixth Avenue
Room 300-MS 74
Seattle, WA 98121
Phone: (206) 615-2609
Fax: (206) 615-2574
E-mail: paul.noski@acf.hhs.gov